

ADAM WANG, Bar No. 201233
LAW OFFICES OF ADAM WANG
12 South First Street, Suite 613
San Jose, CA 95113
Tel: (408) 292-1040
Fax: (408) 416-0248
waqw@sbcglobal.net

Attorneys for Plaintiff/Counterclaim Defendant

UNITED STATES DISTRICT COURT
FOR DISTRICT OF NORTHERN CALIFORNIA

NICOLAS ROBELS,

Plaintiff/Counterclaim Defendant

vs.

EDSON CAMACHO & OSVALDINA LIMA

Defendants/Counterclaim Plaintiffs

Case No.: C08-997 PJH

PLAINTIFF'S CASE MANAGEMENT
STATEMENT¹

Date: August 14, 2008

Time: 2:30 PM

Judge: Phyllis J. Hamilton

In accordance with the Standing Order for All Judges of the Northern District of California, the parties in this matter hereby submit this Joint Case Management Conference Statement.

1. JURISDICTION AND SERVICE

The basis for the Court's subject matter jurisdiction over Plaintiff's claims is the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.*, as alleged in the Complaint. There are no existing issues regarding personal jurisdiction or venue. There are no parties that remain to be served.

2. FACTS

Defendants are husband and wife, engaged in the business of building or remodeling, and

¹ Plaintiff has sent the draft of his Case Management Statement to Defendant Edson Camacho and his wife Ms. Lima via e-mail to Mr. Camacho's e-mail address. No response has been received. Pursuant to this Court's order dated July 3, 2008, Plaintiff files his separate Case Management Statement.

1 then reselling houses. Plaintiff asserts that he was employed to work for the couple for a number
 2 of years on hourly basis. He was required to work in excess of in excess of 8 hours a day or and
 3 40 hours a week on regular basis, but he was only paid “straight time” and not one and one half
 4 of his regular rate.

5 Plaintiff seeks unpaid overtime wages under both FLSA and California Labor Code,
 6 premise pay for missed meal periods, “waiting time penalties” under California Labor Code §
 7 203 for failure to pay employees all wages due at the time of termination. Plaintiff also seeks
 8 restitution under California Business and Professions Code § 17200.

9 Defendants claims that Plaintiff was an independent contractor not entitled to overtime.
 10 Defendants also filed a counter claim against Plaintiff alleging that Plaintiff converted
 11 construction materials purchased with Defendant’s funds, and alleged breach of contract and
 12 conversion.

13 The principal factual issues in dispute are:

- 14 1. Whether Plaintiff was an employee or independent contractor;
- 15 2. Whether and to what extent Plaintiff was not paid overtime;
- 16 3. Whether and to what extent Plaintiff was owed any premium pay for missed meal
 17 periods;
- 18 4. Whether Plaintiff had converted any construction materials purchased with
 Defendants’ funds.

19 **3. LEGAL ISSUES**

- 20 1. Whether Plaintiff was an employee or independent contractor;

21 **4. MOTIONS**

22 Plaintiff anticipates the filing of the following motions:

- 23 (a) Plaintiff’s motion for leave to amend, to add new plaintiffs.
- 24 (b) Plaintiff’s motion for summary judgment or summary adjudication;
- 25 (c) Plaintiff’s Motion for Attorney’s Fees.

5. AMENDMENT OF PLEADINGS

If a stipulation cannot be secured from Defendants, Plaintiff will file a motion to add at least one additional plaintiff. Plaintiff will seek a stipulation or file a motion as soon as he is reasonably certain that no more additional employees will join in this case.

6. EVIDENCE PRESERVATION

By this Case Management Statement, Defendants have hereby put on notice of their obligations to preserve all evidence, including the electronically stored evidence.

7. DISCLOSURES

Plaintiff will serve his initial disclosures on August 7, 2008.

8. DISCOVERY

Plaintiff is prepared to adhere to the limitations set forth in the Federal Rules of Civil Procedure.

9. CLASS ACTIONS

N/A

10. RELATED CASES

There are no related cases or proceedings pending before another Judge of this Court or before another Court or administrative body.

11. RELIEF

Plaintiff is yet to receive information and time cards from Defendants concerning Plaintiff, and does not have sufficient information to ascertain the amount of damages.

12. SETTLEMENT AND ADR

Plaintiff agrees to participate in a Court sponsored mediation or an early Settlement Conference with a Magistrate Judge. During a conversation with Defendant Edson Camacho, Mr. Camacho indicated that he was not willing to settle.

1 **13. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES**

2 Plaintiff does not consent to proceed before a magistrate judge for a trial.

3 **14. OTHER REFERENCES**

4 Plaintiff does not believe this case is suitable for a binding arbitration and will not agree
5 to any other reference.

6 **15. NARROWING OF ISSUES**

7 N/A

8 **16. EXPEDITED SCHEDULE**

9 N/A

10 **17. SCHEDULING**

11 Parties submit the following schedule to this Court in relation to discovery, motions,
12 designation of experts, and pretrial conference and trial:

- 13 (a) Fact discovery cutoff on March 31, 2009;
- 14 (b) Expert reports April 15, 2009;
- 15 (c) Expert rebuttal reports April 30, 2009;
- 16 (d) Expert Discovery Cutoff May 31, 2009;
- 17 (e) Last day of hearing on dispositive motion on June 17, 2009;
- 18 (f) Trial starts July 20, 2009
- 19 (g) The parties agree to meet and confer concerning any modifications to this plan.

20 **18. TRIAL**

21 Both parties have requested a jury trial. Plaintiff expects trial to last 3-5 court days.

22 **19. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS**

23 Plaintiff has no person to disclose other than himself.

24 **20. OTHER MATTERS**

25 N/A.

1 DATED: August 7, 2008

By: /s/ Adam Wang

ADAM WANG

Attorneys for Plaintiff/Counterclaim Defendant

25
CASE MANAGEMENT STATEMENT

Robels v Camacho, et al.

PROOF OF SERVICE

I, the undersigned, declare that I am over the age of eighteen (18) and not a party to this action. My business address is 12 South First Street, Suite 613, San Jose, CA 95113.

On the date hereof, I mailed the following document(s):

1. Plaintiff's Case Management Statement

to the following:

Edson Camacho 350 Paloma Court Martinez, CA 94553	Osvaldina Lima 350 Paloma Court Martinez, CA 94553
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I declare that the under penalty of perjury under the laws of the United States, the foregoing is true and correct.

Dated: August 3, 2008

By: /s/ Adam Wang

Adam Wang

PROOF OF SERVICE

I, the undersigned, declare that I am over the age of eighteen (18) and not a party to this action. My business address is 12 South First Street, Suite 613, San Jose, CA 95113.

On the date hereof, I mailed the following document(s):

PLAINTIFF'S CASE MANAGEMENT STATEMENT

to the following:

Edson Camacho 350 Paloma Court Martinez, CA 94553	Osvaldina Lima 350 Paloma Court Martinez, CA 94553
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I declare that the under penalty of perjury under the laws of the United States, the foregoing is true and correct.

Dated: August 7, 2008

By: /s/Adam Wang
Attorney for Plaintiff